

Lebowitz



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Acurex Corporation

File: B-235746

Date: September 29, 1989

DIGEST

Protest against a nonresponsibility determination is denied where the contracting officer reasonably determined that the individuals proposed by the protester for key personnel positions did not satisfy the solicitation's minimum qualification requirements.

DECISION

Acurex Corporation protests the rejection of its apparent low bid under invitation for bids (IFB) No. DACW09-89-B-0011, issued by the Army Corps of Engineers, for the operation and maintenance of the Stringfellow Leachate Pretreatment Plant, Riverside, California, and the Richwood Mutual Water Company, City of El Monte, California^{1/}, on the basis that Acurex is a nonresponsible bidder. Acurex challenges the contracting officer's nonresponsibility determination that the individuals Acurex proposed for three key personnel positions did not meet the minimum personnel qualification requirements for these positions and that Acurex did not possess sufficient corporate experience in performing comparable work.

We deny the protest.

Under this IFB, issued on an unrestricted basis, Section C8, entitled "Labor Requirements," required bidders to submit with their bids resumes of individuals proposed to fill the

^{1/} The operation of the Stringfellow site involves the extraction and filtration of contaminated groundwater which is endangering a major source of drinking water for the Los Angeles Basin. The Richwood operation involves the removal of volatile organic compounds which have contaminated two water wells, thereby posing a risk for 217 residences. Both are "Superfund" sites.

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positions of general supervisor, superintendent, and maintenance supervisor. The IFB contained minimum personnel qualifications for each position.

Specifically, the general supervisor was required to be a college graduate, knowledgeable in wastewater and toxic waste treatment facilities operations with at least 6 years full-time responsible experience related to management and supervision of such operations.^{2/} The superintendent was required to have years 6 full-time operations and maintenance experience in similar operations, including metals precipitation processes, filter presses, and carbon absorption systems, and to possess a California Grade IV wastewater operator certificate. The maintenance supervisor was required to have five years full-time maintenance experience in secondary and advanced wastewater treatment plant facilities, petroleum waste, and metal plating waste treatment plant facilities, and have a basic knowledge of plant process and electrical and instrumentation systems. In addition, under Section L17 of the IFB, entitled "Bidders Qualifications," the contracting officer could request that firms bidding on the contract submit a statement regarding their previous experience in performing comparable work.

Acurex submitted initial and revised staffing proposals, with resumes, and a statement concerning its previous experience in performing comparable work.^{3/} The Corps' technical experts concluded that the individuals proposed by Acurex did not satisfy the minimum qualification requirements for the respective positions and that Acurex did not

^{2/} This operational experience was required to be related to requirements imposed by the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. § 6901 (1982), and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. § 9601 (1982).

^{3/} Because the contracting officer determined that none of the individuals in Acurex's initial staffing proposal satisfied the required minimum qualifications, Acurex was given two additional weeks to find and submit resumes for acceptable individuals for the respective positions. Although the IFB required the resumes to be submitted with the bid, none of the parties has questioned the contracting officer's decision to allow substitution of personnel after bid opening. Accordingly, we will consider the qualifications of the three individuals as submitted in Acurex's revised staffing proposal.

have adequate corporate experience in performing comparable work. The Stringfellow project manager for the Environmental Protection Agency (EPA) concurred in this determination.

In addition, as part of its preaward survey, the Corps contacted several individuals responsible for contracts previously performed by Acurex; these individuals generally advised that Acurex's performance under these contracts involved air-oriented processes, not water treatment processes. Therefore, based upon all of this information, the contracting officer determined that Acurex was not a responsible bidder because it failed to demonstrate that the individuals it proposed for key staffing positions satisfied the minimum qualification requirements for the positions or that it had sufficient corporate experience in performing comparable work. This protest followed.

Initially, we note that the minimum qualification requirements in the IFB constitute definitive responsibility criteria. Definitive responsibility criteria are specific and objective standards established by an agency for use in a particular procurement to measure a bidder's ability to perform the contract. Service Contractors, Inc., B-234311, Apr. 3, 1989, 89-1 CPD ¶ 345. Further, a contracting agency generally has broad discretion in making responsibility determinations, since the agency must bear the brunt of any difficulties experienced in obtaining the required performance. BMY, Division of Harsco Corp., B-233081; B-233081.2, Jan. 24, 1989, 89-1 CPD ¶ 67. Our Office will not question a nonresponsibility determination unless the protester demonstrates bad faith by the agency or a lack of any reasonable basis for the determination. See R.J. Crowley, Inc., B-229559, Mar. 2, 1988, 88-1 CPD ¶ 220. Here, Acurex has not alleged or shown bad faith by the agency; therefore, Acurex must show that there was no reasonable basis for the contracting officer's determination that the protester did not meet the specific standards set forth in the IFB. See Harry Kahn Assocs., Inc., B-185046, July 19, 1976, 76-2 CPD ¶ 51.

Acurex first alleges that the contracting officer unreasonably interpreted the minimum qualification requirements for the respective positions. It argues that the contracting officer could have inferred from the resumes submitted that the proposed individuals had similar experience, although not necessarily identical experience, to that required by the IFB. We disagree.

We have reviewed the relevant resumes and find that the contracting officer reasonably determined the firm non-responsible. Specifically, the record reveals that while the individual proposed for the position of general supervisor had extensive experience in waste minimization projects and groundwater treatment and remediation projects, the individual's resume clearly did not show 5 years of full-time experience in management and supervision of wastewater and toxic treatment facilities and did not exhibit any experience in dealing with RCRA/CERCLA requirements. We also do not think that the contracting officer could reasonably infer from the experience listed by the individual in his resume (primarily design, development, and installation of treatment equipment) that he possessed the necessary management and supervisory experience.

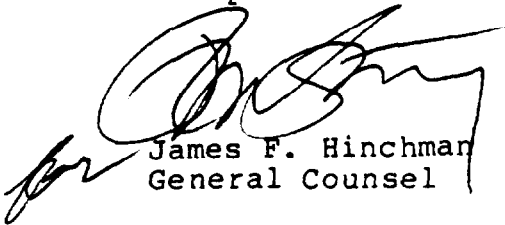
With respect to the individual proposed for the position of superintendent, the record shows that while he had experience in wastewater treatment plant operations and maintenance, his resume did not reasonably demonstrate 6 years of full-time operations and maintenance experience in similar operations, including metals precipitation processes, filter presses, and carbon absorption. Finally, with respect to the individual proposed for the position of maintenance supervisor, the record reveals that while he did have experience in maintenance of wastewater and hazardous waste facilities, his resume did not demonstrate specific experience in secondary and advanced wastewater treatment plant facilities or any petroleum experience. The contracting officer, assisted by his technical experts and the Stringfellow project manager, therefore reasonably concluded, in our view, that the individuals proposed did not satisfy the required minimum qualifications deemed necessary for adequate performance. Accordingly, this ground of protest is denied.

Acurex also alleges that the contracting officer unreasonably determined that Acurex did not have sufficient corporate experience performing comparable work. Acurex argues that its experience in operating a combustion research facility in Arkansas and its experience in operating a limestone scrubber facility in North Carolina were comparable operations to those contemplated by the IFB.

Since the contracting officer reasonably found the firm nonresponsible based on the personnel resumes, we need not separately consider this issue. In any event, however, the record shows that the majority of projects performed by Acurex generally involved combustion/incinerator technology and analysis of industrial or laboratory processes. Acurex's previous experience thus generally involved

air-oriented processes and not water treatment processes. Whether such corporate experience is comparable or similar in kind and scope to that required under the IFB is subject to reasonable differences of opinion, and the contracting officer's negative determination has not been shown to be unreasonable.

The protest is denied.



James F. Hinchman
General Counsel